

AMENDED IN SENATE SEPTEMBER 16, 2008

AMENDED IN SENATE AUGUST 18, 2008

AMENDED IN SENATE JULY 1, 2008

AMENDED IN ASSEMBLY MAY 8, 2008

AMENDED IN ASSEMBLY APRIL 22, 2008

AMENDED IN ASSEMBLY APRIL 1, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## ASSEMBLY BILL

**No. 2988**

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**Introduced by Assembly Member Feuer Emmerson**

February 22, 2008

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~~An act relating to whistleblower protections, and declaring the urgency thereof, to take effect immediately. An act to add Sections 5272.2, 5272.3, 5442.1, 5442.6, and 5442.14 to the Business and Professions Code, relating to outdoor advertising, and declaring the urgency thereof, to take effect immediately.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 2988, as amended, ~~Feuer Emmerson. California Whistleblower Protection Act. Outdoor advertising.~~

*(1) The Outdoor Advertising Act provides for the regulation by the Department of Transportation of advertising displays, as defined, within view of public highways. The act exempts from its provisions certain advertising displays that advertise the business conducted or services rendered or goods produced or sold on the property upon which the display is placed, as specified.*

*This bill would exempt from the provisions of the act certain advertising displays, installed and operated in conjunction with the development of public assembly facilities, as defined, located within, or immediately adjacent to, the Los Angeles Sports and Entertainment District, that meet specified requirements.*

*This bill would also exempt from provisions of the act an advertising display that consists of a freeway-oriented digital sign at a specified location in the City of Rancho Cucamonga.*

*(2) The Outdoor Advertising Act also prohibits the placement or maintenance of an advertising display on property adjacent to a section of freeway that has been landscaped if the advertising display is designed to be viewed primarily by persons traveling on the main-traveled way of the landscaped freeway with specified exemptions.*

*This bill would exempt from that prohibition one advertising structure or sign located in the City of Huntington Beach that is used to identify development projects or products or specified entities located within the jurisdiction of, or sponsored by, the City of Huntington Beach or its redevelopment agency to support economic development activities that support the automobile dealerships located at auto malls in the City of Huntington Beach if specified conditions are satisfied.*

*This bill would also exempt from that prohibition (a) certain advertising displays in the City of Riverside and (b) advertising displays in the County of Los Angeles within the boundaries of the Lennox School District, subject to specified conditions.*

*(3) This bill would make certain findings and declarations regarding the inapplicability of a general statute within the meaning of Section 16 of Article IV of the California Constitution.*

*(4) This bill would declare that it is to take effect immediately as an urgency statute.*

~~The California Whistleblower Protection Act authorizes a state employee or an applicant for state employment to file a complaint, as specified, with the State Personnel Board alleging reprisal, retaliation, threats, coercion, or similar improper conduct prohibited under the act. The California Supreme court, in *Miklosy v. Regents of the University of California*, interpreted that act as follows: a state employee may bring a damages action alleging whistleblower retaliation after first seeking relief from the State Personnel Board; a California State University employee may seek “a remedy” if the state university’s administrative remedy fails to proceed to a timely decision or does not “satisfactorily address” the employee’s complaint within 18 months; and a University~~

~~of California employee may bring a damages action only if the University's administrative remedy fails to result in a timely decision; whereas, if the university reaches a timely decision in its own favor, the employee has no cause of action for damages.~~

~~This bill would overturn Miklosy v. Regents of the University of California. The bill would also declare the intent of the Legislature to enact legislation to ensure that employees of the University of California have the same measure of protection under the California Whistleblower Protection Act provided to the employees of the California State University system.~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

~~Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.~~

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 5272.2 is added to the Business and
- 2     Professions Code, to read:
- 3     5272.2. (a) None of the provisions of this chapter apply to an
- 4     advertising display installed and operated in conjunction with the
- 5     development or operation of public assembly facilities located
- 6     within, or immediately adjacent to, the Los Angeles Sports and
- 7     Entertainment District, which was established by the City of Los
- 8     Angeles pursuant to Ordinance No. 174,224 effective October 21,
- 9     2001.
- 10    (b) For purposes of this section, "public assembly facilities"
- 11    shall include arenas, convention centers, theaters, or any other
- 12    live entertainment venues with a capacity in excess of 5,000.
- 13    (c) This section shall only apply to advertising displays installed
- 14    and operated by, or on behalf of, the owner of the property on
- 15    which a public assembly facility is located.
- 16    (d) This section shall only apply if placement of the advertising
- 17    display does not cause a reduction of federal aid highway funds
- 18    as provided in Section 131 of Title 23 of the United States Code.
- 19    SEC. 2. Section 5272.3 is added to the Business and Professions
- 20    Code, to read:
- 21    5272.3. (a) None of the provisions of this chapter apply to an
- 22    advertising display that consists of a freeway-oriented digital sign

1 *to be installed in the northeast quadrant of Arrow Highway and*  
2 *State Highway Route 15 in the City of Rancho Cucamonga.*

3 *(b) This section shall only apply if placement of the advertising*  
4 *display does not cause a reduction of federal aid highway funds,*  
5 *as provided in Section 131 of Title 23 of the United States Code.*

6 *SEC. 3. Section 5442.1 is added to the Business and Professions*  
7 *Code, to read:*

8 *5442.1. Section 5440 does not apply to one advertising*  
9 *structure or sign located in the City of Huntington Beach, which*  
10 *was in place before January 1, 2008, if the advertising display is*  
11 *used exclusively to support the automobile dealerships located at*  
12 *auto malls in the City of Huntington Beach and the display is*  
13 *adjacent or proximate to a redevelopment project area of the*  
14 *Redevelopment Agency of the City of Huntington Beach, if all of*  
15 *the following conditions are met:*

16 *(a) No other display is used by the city pursuant to this section.*

17 *(b) The governing body of the city or agency has authorized*  
18 *placement of the display by an ordinance or a resolution adopted*  
19 *following a duly noticed public hearing regarding the display.*

20 *(c) Placement of the display will not necessitate the immediate*  
21 *trimming, pruning, topping, or removal of existing trees in order*  
22 *to make the display visible or to improve its visibility, unless done*  
23 *as part of the normal landscape maintenance activities that would*  
24 *have been undertaken without regard to the placement of the*  
25 *display.*

26 *(d) The advertising display does not advertise products, goods,*  
27 *or services directed at an adult population, including, but not*  
28 *limited to, alcohol, tobacco, gambling, or sexually explicit material.*

29 *(e) The display does not cause a reduction in federal aid*  
30 *highway funds, as provided in Section 131 of Title 23 of the United*  
31 *States Code.*

32 *SEC. 4. Section 5442.6 is added to the Business and Professions*  
33 *Code, to read:*

34 *5442.6. (a) Section 5440 does not apply to any freestanding*  
35 *identifying structure used exclusively to identify development*  
36 *projects, private commercial centers, or associations located within*  
37 *the jurisdiction of, and approved by, the City of Riverside to*  
38 *support economic development activities.*

39 *(b) A structure erected pursuant to subdivision (a) shall conform*  
40 *to all of the following conditions:*

1     (1) *Not more than one identifying structure may be used by the*  
2     *City of Riverside and only if approved by that city by ordinance*  
3     *or resolution after a duly noticed public hearing regarding the*  
4     *structure.*

5     (2) *Placement of the structure shall not require the immediate*  
6     *trimming, pruning, topping, or removal of existing trees to provide*  
7     *visibility to that structure, unless done as part of the normal*  
8     *landscape maintenance activities that would have been undertaken*  
9     *without regard to the placement of the structure.*

10    (3) *No public funds may be expended to pay for the costs of the*  
11    *structure.*

12    (4) *The structure shall not cause a reduction in federal aid*  
13    *highway funds as provided in Section 131 of Title 23 of the United*  
14    *States Code.*

15    SEC. 5. *Section 5442.14 is added to the Business and*  
16    *Professions Code, to read:*

17    5442.14. *Notwithstanding any other provision of this chapter,*  
18    *Section 5440 does not apply to any advertising displays in the*  
19    *County of Los Angeles if all of the following conditions are met:*

20    (a) *There are no more than three displays and those displays*  
21    *are located on property that the Lennox School District has owned*  
22    *before January 1, 2000.*

23    (b) *The displays are located within the boundaries of the Lennox*  
24    *School District.*

25    (c) *Placement or maintenance of the advertising displays does*  
26    *not require the immediate trimming, pruning, topping, or removal*  
27    *of trees located on a state highway right-of-way to provide visibility*  
28    *to the advertising displays, unless done as part of the normal*  
29    *landscape maintenance activities that would have been undertaken*  
30    *without regard to the placement of the displays.*

31    (d) *Any rental proceeds received by the Lennox School District*  
32    *from the nonconforming displays are expended by the school*  
33    *district for instructional materials and classroom teacher support*  
34    *costs.*

35    (e) *No advertising displays shall advertise products or services*  
36    *that are directed at an adult population, including, but not limited*  
37    *to, alcohol, tobacco, gambling, or sexually explicit material.*

38    (f) *The advertising displays shall not cause a reduction in federal*  
39    *aid highway funds as provided in Section 131 of Title 23 of the*  
40    *United States Code.*

1     (g) *No public funds are required to be expended to pay for the*  
2 *costs of the displays.*

3     (h) *The displays do not impose any additional liability of the*  
4 *Department of Transportation.*

5     SEC. 6. *With regard to Section 3 of this act, the Legislature*  
6 *finds and declares all of the following:*

7     (a) *The Outdoor Advertising Act, set forth in Chapter 2*  
8 *(commencing with Section 5200) of Division 3 of the Business and*  
9 *Professions Code, regulates the placement of advertising displays*  
10 *along highways and provides limited exemptions from its*  
11 *provisions.*

12     (b) *The practical effect of the Outdoor Advertising Act is that*  
13 *its recognized exemptions are limited to cities that have a project*  
14 *that is located adjacent to a highway.*

15     (c) *The City of Huntington Beach has merged five areas into*  
16 *the Huntington Beach Redevelopment Project Area and has also*  
17 *activated the Southeast Coastal Redevelopment Project. These*  
18 *redevelopment subareas are not located in one contiguous area*  
19 *and have redevelopment projects that are not located adjacent to*  
20 *a highway.*

21     (d) *In 1992, pursuant to a permit issued by the Outdoor*  
22 *Advertising Branch of the Department of Transportation, the*  
23 *Redevelopment Agency of the City of Huntington Beach assisted*  
24 *with the construction of an electronic readerboard adjacent to the*  
25 *405 Freeway in the City of Huntington Beach. Since 1992, the sign*  
26 *has advertised the Huntington Beach Automobile Dealers*  
27 *Association and the products of its members.*

28     (e) *Existing law prohibits certain automobile dealership malls*  
29 *in the City of Huntington Beach from erecting advertising signs*  
30 *or displays on city property that is adjacent to the freeway. Other*  
31 *competing auto malls in Orange County, located along the same*  
32 *freeway but not next to a portion of the freeway that has been*  
33 *designated as a landscaped freeway, are not prohibited from*  
34 *erecting those signs or displays. This situation puts those auto*  
35 *dealerships in the City of Huntington Beach at a serious*  
36 *competitive disadvantage.*

37     (f) *Automobile dealerships located in the auto malls in the City*  
38 *of Huntington Beach are the highest sales tax generators in the*  
39 *city. In addition, because those dealerships employ several persons,*  
40 *the auto malls provide significant other benefits to the city's*

1 *economy. Accordingly, the City of Huntington Beach and the*  
2 *Redevelopment Agency of the City of Huntington Beach have an*  
3 *obligation to promote those dealerships' ability to compete with*  
4 *other automobile dealerships in Orange County.*

5 *(g) Section 3 of this act will enable the City of Huntington Beach*  
6 *and the Redevelopment Agency of the City of Huntington Beach*  
7 *to continue with those advertising activities that have occurred*  
8 *over the past several years to promote auto dealerships in the City*  
9 *of Huntington Beach.*

10 *SEC. 7. Due to unique circumstances concerning the location*  
11 *of the advertising displays, or proposed advertising displays, set*  
12 *forth in this act and the need for advertising in those locations, it*  
13 *is necessary that an exemption from the Outdoor Advertising Act*  
14 *be provided for those displays, and the Legislature finds and*  
15 *declares that a general statute cannot be made applicable within*  
16 *the meaning of Section 16 of Article IV of the California*  
17 *Constitution.*

18 *SEC. 8. This act is an urgency statute necessary for the*  
19 *immediate preservation of the public peace, health, or safety within*  
20 *the meaning of Article IV of the Constitution and shall go into*  
21 *immediate effect. The facts constituting the necessity are:*

22 *In order to enable advertising pursuant to this act at the earliest*  
23 *possible time, it is necessary that this act take effect immediately.*

24 ~~SECTION 1. The Legislature hereby overturns Miklosy v.~~  
25 ~~Regents of the University of California (July 31, 2008, S139133)~~  
26 ~~\_\_\_\_\_ Cal. 4th \_\_\_\_\_.~~

27 ~~SEC. 2. It is the intent of the Legislature to enact legislation~~  
28 ~~to ensure that employees of the University of California have the~~  
29 ~~same measure of protection under the California Whistleblower~~  
30 ~~Protection Act provided to the employees of the California State~~  
31 ~~University system.~~

32 ~~SEC. 3. This act is an urgency statute necessary for the~~  
33 ~~immediate preservation of the public peace, health, or safety within~~  
34 ~~the meaning of Article IV of the Constitution and shall go into~~  
35 ~~immediate effect. The facts constituting the necessity are:~~

36 ~~On July 31, 2008, the California Supreme Court, in Miklosy v.~~  
37 ~~Regents of California (S139133) \_\_\_\_\_ Cal. 4th \_\_\_\_\_, ruled that~~  
38 ~~the California Whistleblower Protection Act does not provide the~~  
39 ~~same measure of protection to employees of the University of~~  
40 ~~California as it does to other public employees. Three of the~~

1 justices, in the concurring opinion, invited the Legislature to act  
2 to clarify whether the Legislature intended to provide the  
3 employees of the University of California with the same measure  
4 of protection under the act as provided to the employees of the  
5 California State University system. In order to authorize and  
6 provide that same level of protection at the earliest possible time,  
7 it is necessary for this act to take effect immediately.

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